The Ontario Court Of Appeal Addresses Inability To Mitigate Due To Physical Incapacity And Aggravated Damages In The Manner Of Dismissal

Bottom Line

The Court of Appeal recently confirmed that an employee may be able to establish that they were physically incapable of mitigating their damages during a reasonable notice period, even without expert medical evidence.
The Court of Appeal also confirmed that aggravated damages can be awarded if an employer terminates employment in a manner that is untruthful, misleading, or unduly insensitive and causes the employee harm.

Background Facts

Krmpotic v. Thunder Bay Electronics Limited, 2024 ONCA 332 is a decision relating to the employment termination of a 30-year employee who was a building maintenance supervisor and whose employment was terminated the same day that he returned to work following a back surgery. There was no written employment agreement in place. The employer paid him 16 months' notice, despite his rejection of that offer and decision to file an action for wrongful dismissal.

The trial judge awarded the employee a 24-month reasonable notice period. The employer argued that the reasonable notice period should be reduced because the employee failed to make reasonable efforts to mitigate his damages. The trial judge acknowledged that the employee's attempts to find alternative employment were "scant at best", but accepted that the employee could not mitigate during the notice period because he was recovering from back surgery. While the employee did not present expert medical evidence at trial, he led evidence of his medical history and, through witness testimony from himself, his wife, and his son, established that his recovery from the surgery significantly limited his ability to perform the physical labour that his occupation demanded on a daily basis.

The trial judge also awarded the employee $50,000 in "aggravated/moral damages" ("aggravated damages"). The employee did not provide the court with medical or psychological evidence confirming that the manner in which his employment was terminated resulted in mental distress. However, the judge held that the employer

conducted the termination in a way that was “the antithesis of an employer’s duty” to be candid, reasonable, honest and forthright. The trial judge also found that the employer breached the duty of good faith in the manner of dismissal in several ways, including in finding that employment was terminated because of the employee’s physical limitations.

The employer appealed both the finding on mitigation and the award of aggravated damages.

The Court of Appeal’s Decision

The Court of Appeal rejected the employer’s grounds of appeal.

First, the Court held that there is no general principle that physical incapacity can only be established by expert medical evidence. In this case, the employee’s physical injuries were supported by evidence upon which the trial judge was entitled to conclude that the employee had been physically unable to mitigate his losses by finding other employment during the notice period.

The Court of Appeal also rejected the employer’s argument that the trial judge could not award aggravated damages in this case. The employer urged the Court to conclude that the judge erred by considering mental distress damages separately from the manner of dismissal. The employer argued that the judge could award aggravated damages only if there was evidence that any mental distress – beyond the normal distress and hurt of being dismissed from employment – was caused by the manner of dismissal. The Court rejected this argument, stating that it reflected an “unduly narrow view of the employer’s duty of good faith during the termination process and the meaning of mental distress in that context”. The Court anchored its reasoning in the duty of honest performance of employment contracts, and stated that “[c]allous or insensitive conduct in the manner of dismissal is a breach of the duty to exercise good faith.”

Takeaway

This decision is a reminder that expert medical evidence is not always required to establish that an employee is physically incapable of performing comparable work during the reasonable notice period. Employers should also take note of the importance of being candid, honest and forthright in implementing the decision to terminate an employment relationship.

The content of this article is intended to provide a general guide to the subject matter. Specialist advice should be sought about your specific circumstances.

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